

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 12-1757 (DSD/JJG)

Kevin David Pomerence,

Plaintiff,

v.

ORDER

Cheryl Bird c/o I.R.S.,

Defendant.

This matter is before the court upon the application of pro se plaintiff Kevin David Pomerence to proceed in forma pauperis (IFP) on appeal.

A litigant who seeks to be excused from paying the filing fee for an appeal may apply for IFP status under 28 U.S.C. § 1915. See also Fed. R. App. P. 24(a). To qualify for IFP status, the litigant must demonstrate that he or she cannot afford to pay the full filing fee. 28 U.S.C. § 1915(a)(1). Even if a litigant is found to be indigent, however, IFP status will be denied if the court finds that the litigant's appeal is not taken in "good faith." 28 U.S.C. § 1915(a)(3). Good faith in this context is judged by an objective standard and not by the subjective beliefs of the appellant. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). To determine whether an appeal is taken in good faith, the court must decide whether the claims to be decided on appeal are factually or legally frivolous. Id. at 445. An appeal is frivolous, and therefore cannot be taken in good faith, "where it

lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989).

This court denied Pomeranke’s previous application for IFP and dismissed the action for failure to state a claim. ECF No. 4. Pomeranke seeks to appeal the dismissal based on the “indesisiveness [sic] of the courts.” ECF No. 6. The court, however, must dismiss an action if it determines that the plaintiff fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). For the reasons set forth in the court’s August 17, 2012, order, Pomeranke’s action fails to state a claim on which relief may be granted. See ECF No. 4.

The court has carefully reviewed the record in this case, including the August 17, 2012, order. Based on its review of the record and file, the court concludes that plaintiff’s contentions lack an arguable basis in fact or law and that an appeal of this action would not be taken in good faith. Accordingly, based upon the foregoing, and all of the files and proceedings herein, **IT IS HEREBY ORDERED** that plaintiff’s application to proceed in forma pauperis [ECF No. 7] is denied.

Dated: October 23, 2012

s/David S. Doty
David S. Doty, Judge
United States District Court